

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|---|---------------------------|--|--|---------------------------------|
| Investigator: StaceyAnn McFarlane-Ross | Team: Squad #1 | CCRB Case #: 201902678 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 03/27/2019 9:00 AM | Location of Incident: Intersection of Greenwich Street and Rector Street | Precinct: 01 | 18 Mo. SOL 9/27/2020 | EO SOL 5/14/2021 | |
| Date/Time CV Reported Thu, 03/28/2019 11:08 AM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 03/28/2019 11:08 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Rexford Asiedu | 10830 | 951513 | PBMS |
| 2. POM Stephen Oleary | 06298 | 952066 | PBMS |
| 3. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------------|-----------|--------|----------|
| 1. POM Maxwell Outsen | 28444 | 947316 | 001 PCT |
| 2. POM Joseph Bellomo | 24336 | 963871 | 001 PCT |
| 3. LT Robert Fisher | 00000 | 940144 | 001 PCT |
| 4. POF Alexa Lindo | 06482 | 958821 | 001 PCT |
| 5. POF Khamwatee Brijbukhan | 25718 | 932365 | 001 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Rexford Asiedu | Abuse: Police Officer Rexford Asiedu stopped the vehicle in which § 87(2)(b) was an occupant. | |
| B.POM Rexford Asiedu | Abuse: Police Officer Rexford Asiedu searched the vehicle in which § 87(2)(b) was an occupant. | |
| C.POM Stephen Oleary | Abuse: Police Officer Stephen O'Leary searched the vehicle in which § 87(2)(b) was an occupant. | |
| D.POM Stephen Oleary | Force: Police Officer Stephen O'Leary used physical force against § 87(2)(b) | |
| E.POM Rexford Asiedu | Force: Police Officer Rexford Asiedu used physical force against § 87(2)(b) | |
| F.POM Stephen Oleary | Abuse: Police Officer Stephen O'Leary searched the vehicle in which § 87(2)(b) was an occupant. | |
| G. An officer | Abuse: An officer threatened § 87(2)(b) with the use of force. | |
| H. An officer | Abuse: An officer threatened to arrest § 87(2)(b) | |
| I.POM Rexford Asiedu | Abuse: Police Officer Rexford Asiedu searched § 87(2)(b) | |
| J. An officer | Off. Language: An officer made remarks to § 87(2)(b) based upon a perceived mental disability. | |

Case Summary

On March 28, 2019, § 87(2)(b) filed this complaint with the CCRB via telephone.

On March 27, 2019, at approximately 9:00am, § 87(2)(b) an Uber driver, was driving an unidentified female southbound on Greenwich Street, in Manhattan, when he stopped at the traffic light at the intersection of Rector Street. Once the light turned green, § 87(2)(b) entered the crosswalk and PO Rexford Asiedu, from Patrol Borough Manhattan South Scooter Task Force, put his hand up and gestured to § 87(2)(b) to stop the car (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) opened his window part way and PO Asiedu asked § 87(2)(b) for his driver's license, registration. § 87(2)(b) refused to provide his documents. PO Asiedu and PO Stephen O'Leary, also of the Scooter Task Force, instructed § 87(2)(b) to exit the car and he refused. PO Asiedu and PO O'Leary then pushed § 87(2)(b) s window down and PO Asiedu opened the car's door from the inside and PO O'Leary entered the car and unbuckled § 87(2)(b) s seatbelt (**Allegations B and C: Abuse of Authority**, § 87(2)(g) PO O'Leary placed a handcuff on § 87(2)(b) s left wrist and pulled him out of the car by the handcuffed wrist (**Allegation D: Force**, § 87(2)(g) PO Asiedu then pushed § 87(2)(b) in the chest against the subway gate (**Allegation E: Force**, § 87(2)(g) At that point, PO O'Leary drove § 87(2)(b) s car to the other side of the intersection (**Allegation F: Abuse of Authority**, § 87(2)(g)

As § 87(2)(b) stood with PO Asiedu, an officer told him, "Shut up or we'll take you to the ground, then take you to the precinct" (**Allegations G and H: Abuse of Authority**, § 87(2)(g) § 87(2)(b). PO Asiedu asked § 87(2)(b) for his identification again and § 87(2)(b) refused. PO Asiedu then entered § 87(2)(b) s right front pocket, took out his wallet and took out his driver's license (**Allegation I: Abuse of Authority**, § 87(2)(g) An officer asked § 87(2)(b) if he was the 911 caller. § 87(2)(b) confirmed that he was the 911 caller and the officer called him, "crazy" (**Allegation J: Offensive Language**, § 87(2)(g)

§ 87(2)(b) was issued two summonses for § 87(2)(b)

During the investigation, video surveillance footage from George's, a restaurant located at 89 Rector Street, in Manhattan and cell phone video recordings made by § 87(2)(b) were obtained, which captured the incident (Board Review 05, 03, 04).

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Rexford Asiedu stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) (Board Review 01, 02) testified that once the traffic light turned green, there was a truck in front of him that was turning East onto Rector Street. He waited until the truck cleared the intersection before proceeding. Before driving into the crosswalk, § 87(2)(b) observed PO Asiedu and PO O'Leary walking in the crosswalk. § 87(2)(b) explained that PO Asiedu put his hand up gesturing for him to stop and made a statement. He did not know or hear what PO Asiedu said as his window was closed. Within seconds PO Asiedu and PO O'Leary walked over to § 87(2)(b)'s car and he opened his window. § 87(2)(b) told PO Asiedu that he had the green light and that he was driving straight. PO Asiedu asked § 87(2)(b) for his driver's license and registration approximately three times and each time, § 87(2)(b) refused to provide his documents. § 87(2)(b) told PO Asiedu, "You can't do nothing. You work to protect me." § 87(2)(b) explained that he refused to give his documents to PO Asiedu because he did nothing wrong and because he did not have the time to go to court.

PO Asiedu (Board Review 08) testified that as he walked westbound on Rector Street he stepped in the crosswalk and observed § 87(2)(b) slowly moving his car into the crosswalk when there were pedestrians in the crosswalk and spillback in the intersection. He defined spillback as when a vehicle cannot successfully clear the intersection after entering it. PO Asiedu put his hand up and gestured to § 87(2)(b) to stop his car and verbally instructed him approximately three times to stop his car. § 87(2)(b) refused to stop his car and continued to drive. § 87(2)(b) eventually stopped his car in the crosswalk. PO Asiedu and PO O'Leary approached § 87(2)(b)'s car and tried to tell § 87(2)(b) why he was stopped. § 87(2)(b) responded by pointing to the light, told them that he had a green light, that they were not the boss, and had no reason to stop him. At that point, PO Asiedu asked § 87(2)(b) for his driver's license. § 87(2)(b) told him that he was not the boss and refused to give his driver's license.

PO O'Leary's (Board Review 09) testimony was consistent with PO Asiedu.

§ 87(2)(b)'s cell phone video (Board Review 03) shows at 08:00:44, § 87(2)(b) rolling into the crosswalk while the truck in front of him is still in the intersection and pedestrians are actively crossing in the crosswalk. PO Asiedu steps into the crosswalk and put his hand up at § 87(2)(b)'s car. PO Asiedu makes several hand gestures and is speaking. At 08:00:49, PO O'Leary also enters the crosswalk. § 87(2)(b) says, "I'm going straight." At 08:00:50, the officers approach § 87(2)(b)'s car. § 87(2)(b) says, "You cannot do nothing. You work to protect me." At 08:01:02, it is heard, "License and registration. You're in the crosswalk." At 08:01:04, § 87(2)(b) responds, "No. I don't have to give you anything." At 08:01:12, one of the officers instructs § 87(2)(b) to put his car in park, and he responds, "No". At 08:01:16, both officers are speaking. One instructs § 87(2)(b) to put his car in park and the other asks § 87(2)(b) for his license and registration. § 87(2)(b) says no each time.

According to the Department of Transportation 4-07 (Board Review 06), no operator shall enter an intersection and its crosswalks unless there is sufficient unobstructed space beyond the

intersection and its crosswalks in the lane in which he/she is traveling to accommodate the vehicle, notwithstanding any traffic control signal indication to proceed.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Rexford Asiedu searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (C) Abuse of Authority: Police Officer Stephen O'Leary searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Force: Police Officer Stephen O'Leary used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Rexford Asiedu used physical force against § 87(2)(b)

§ 87(2)(b) testified that as he refused to provide his documents to PO Asiedu, he called 911 and reported that officers stopped him for no reason. PO Asiedu and PO O'Leary instructed him multiple times to exit the car and he refused. During that time, § 87(2)(b)'s driver's side window was partially open. PO Asiedu and PO O'Leary placed their palms on the car window and pushed down until PO Asiedu's hand could fit through it. PO Asiedu then pushed the window's switch to open the window fully and then opened § 87(2)(b)'s driver door from the inside. Once the door was open, PO O'Leary leaned into the car, unbuckled § 87(2)(b)'s seatbelt and handcuffed his left wrist. PO O'Leary then pulled § 87(2)(b) out of the car by the handcuffed wrist. § 87(2)(b) stated that his wrist was in pain from PO O'Leary pulling on it. At that point, § 87(2)(b) told PO O'Leary that he would step out of the car and exited. PO O'Leary placed the handcuffs on § 87(2)(b)'s free wrist. PO Asiedu then walked § 87(2)(b) to a subway gate that was steps away from § 87(2)(b)'s car and pushed him in the chest.

PO Asiedu testified that as he spoke to § 87(2)(b) he began to close his window. He and PO O'Leary placed their hands at the top of the window so he could not close it. He and PO O'Leary asked § 87(2)(b) again for his documents and asked him to turn his car off. § 87(2)(b) complied and turned his car off. After that, PO Asiedu and PO O'Leary instructed § 87(2)(b) to exit the car and § 87(2)(b) called for additional police. PO Asiedu then put his hand inside § 87(2)(b)'s car window and opened § 87(2)(b)'s car door from the inside, and unbuckled § 87(2)(b)'s seatbelt as PO O'Leary held § 87(2)(b)'s hand. PO Asiedu and PO O'Leary then physically removed § 87(2)(b) from the car by pulling his arms. § 87(2)(b) walked out of the car on his own and PO O'Leary rear-cuffed § 87(2)(b) outside of the car. PO Asiedu did not witness PO O'Leary pull § 87(2)(b)'s wrist while it had the handcuffs on. PO Asiedu explained that § 87(2)(b) did not offer any resistance as he stood outside of his car. He did not push § 87(2)(b) in the chest or up against the subway station gate.

PO O'Leary § 87(2)(g) did not remember if he put his hand in the window and pushed down. He explained that § 87(2)(b) actively refused to exit his car so he was pulled from the car.

§ 87(2)(b)'s cell phone (Board Review 04) is positioned in the dash, facing the road in front of the car, so the video was not in a position to capture the allegations.

In People v. Rosario 94 A.D.2d 329 (1983), a valid investigatory stop of a car may be accompanied, as a protective measure, by the opening of any doors and a directive from the police to the occupants to exit the car (Board Review 07).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

As per NYPD Patrol Guide Procedure 221-01, officers are to use reasonable force as is necessary to gain control of a subject (Board Review 13).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED].

Allegation (F) Abuse of Authority: Police Officer Stephen O'Leary searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO O'Leary drove § 87(2)(b)'s car from out of the middle of the road and parked it on the other side of the intersection.

According to the NYPD Patrol Guide Procedure 217-01, an officer is required to remove a vehicle from the roadway as soon as practical (Board Review 14).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED].

Allegation (G) Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

Allegation (H) Abuse of Authority: An officer threatened to arrest § 87(2)(b)

Allegation (J) Offensive Language: An officer made remarks to § 87(2)(b) based upon a perceived mental disability.

§ 87(2)(b) testified that when PO Asiedu held him against the subway gate, PO1 approached them. § 87(2)(b) described PO1 as a white male, in his 30s, heavy set, brown hair, 5'8"-5'10" tall, in uniform. § 87(2)(b) complained that he was not in the crosswalk. PO1 responded, "Shut up or we'll take you to the ground, then take you to the precinct." Responding officers escorted § 87(2)(b) to his car so he could sit down. During that time, an unidentified officer, PO3, whom § 87(2)(b) described as a white male, 50-60 years old, white or graying hair, approximately 5'7" tall in plain clothes, approached § 87(2)(b) and asked him if he was the 911 caller. § 87(2)(b) responded affirmatively and PO3 responded, "You're funny. You're crazy. You're funny." PO3 then laughed and walked away. § 87(2)(b) was upset by the comment.

PO Asiedu stated that he did not have help as he stayed with § 87(2)(b). Several white male officers were at the location and § 87(2)(b) argued with several officers, but PO Asiedu did not hear any officer threaten him with arrest or force. PO Asiedu did not see an older white male officer speak with § 87(2)(b).

PO O'Leary explained that there were several officers from the 1st Precinct that responded to the 911 call as well as several officers from Patrol Borough Manhattan South Scooter Task Force, whose command is within site and walking distance of the incident. He did not see any officers assist PO Asiedu with § 87(2)(b). PO O'Leary did not see any older white male officers on scene or speaking to § 87(2)(b).

§ 87(2)(g) [REDACTED]

Allegation (I) Abuse of Authority: Police Officer Rexford Asiedu searched § 87(2)(b)

[REDACTED]

While they were standing by the subway gate, PO Asiedu asked § 87(2)(b) again for his driver's license and § 87(2)(b) refused. PO Asiedu then entered § 87(2)(b)'s right front pocket, took out his wallet and took the driver's license from the wallet and replaced the wallet.

PO Asiedu testified that he asked § 87(2)(b) for his identification and § 87(2)(b) told him that his wallet was in his front pocket. He removed the wallet and license from the wallet. He did not ask § 87(2)(b) if he could enter his pocket. § 87(2)(b) did not say anything when PO Asiedu entered his pocket.

According to People v. Reid, 24 N.Y. 3d 615 (2014), the mere existence of probable cause to arrest an individual does not provide justification for an officer to frisk or search the individual unless the officer has actually placed or is in the process of placing the suspect under arrest (Board Review 16). According to the NYPD Patrol Guide 209-09 While issuing an individual a summons, an officer must establish the identity of that individual. In case an officer has doubts regarding the identity of the violator, an officer should remove the individual to the command to investigate his or her identity (Board Review 17).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- PO Stephen O’Leary has been a member-of-service for seven years and this is the first CCRB complaint to which he has been a subject.
- PO Rexford Asiedu has been a member-of-service for seven years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(b)

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 8, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 15).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 1

Investigator: _____ Inv. McFarlane-Ross _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date